

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION**

**Policy for Evaluation of Conservation Efforts When Making Listing Decisions
February 2002**

Background

The Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), specifies the process by which the National Marine Fisheries Service (Service) can list species as threatened or endangered. The ESA requires the Service, when considering whether to list a species, to take into account “those efforts, if any, being made by any State . . . or any political subdivision of a State . . . to protect such species.” Conservation efforts are often formalized in conservation agreements, conservation plans, management plans, or other similar documents and are often developed with the specific intent of making the listing of species as threatened or endangered unnecessary. Sometimes these agreements or plans are not fully implemented or their results are not fully achieved at the time the Service must make a listing decision. These agreements or plans sometimes rely on future voluntary participation by private landowners, as opposed to enacted protective legislation or regulations. When an agreement or plan has not been fully implemented, its results have not been fully achieved, or it relies on future voluntary conservation efforts, the Service must assess the likelihood that the efforts will be implemented and effective.

The development of an agreement or plan by a State or other entity is completely voluntary. When a State or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing the subject species unnecessary, the Services will use the criteria identified in this policy to evaluate formalized conservation efforts when making listing decisions. The development of an agreement, with the Services’ involvement, that has the specific intention of making listing unnecessary constitutes a new information collection. One of the criteria identified in this policy is that such agreements and plans contain a provision for monitoring and reporting the progress and results of implementation of conservation efforts. This criterion also constitutes a new information collection.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The development of conservation plans could prevent some species from becoming so imperiled that the only recourse is to add them to the list of threatened and endangered species under the Endangered Species Act. The purpose of this policy is to encourage such plans and to give applicants guidance about how the Services will evaluate such plans. This policy identifies criteria for evaluating the certainty of implementation and effectiveness of a conservation effort. The Service developed this draft policy to ensure consistent and adequate evaluation of

agreements and plans in making listing decisions and to help States and other entities develop agreements and plans that will be adequate to make listing species unnecessary.

In addition, conservation professionals have long considered monitoring and reporting to be an essential component of scientifically sound agreements and plans and currently incorporate monitoring and reporting into all agreements and plans. The Service included a criterion in this policy for monitoring and reporting provisions to ensure consistency with sound biological and conservation principles and for completeness. Monitoring is the mechanism for confirming success, detecting failure, and detecting changes in conditions requiring modifications to the agreement or plan or possibly emergency conservation efforts by the Service, States, or others. In addition, monitoring is sometimes incorporated in agreements or plans as part of implementation of experimental measures. Including provisions for monitoring and reporting is necessary to demonstrate that the conservation efforts are likely to be implemented and effective.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

Any entity may develop a conservation plan. The criteria in the policy will be used by the Service to determine if implementation of the plan will likely result in making a listing unnecessary. This policy is necessary because the Service has not had any express criteria for judging whether a plan will be implemented and will be effective. We have lost some recent court cases concerning conservation plans, and several states have requested the Service to provide some certainty by publishing the criteria by which the Services will evaluate the likelihood of implementation and effectiveness of a conservation effort.

The responsibility for monitoring the progress and results of implementation of an agreement or plan is determined and agreed to during the development of the agreement or plan. In most cases, the State or other entity which is leading development of the agreement or plan will conduct the monitoring. However, specific efforts may be implemented and monitored by the Service, property owners, or other entities.

The nature of the monitoring and reporting component of an agreement or plan will vary according to the species addressed, land ownership, specific conservation efforts, expertise of participants, and other factors. Monitoring and reporting implementation of some efforts, such as the removal of a structural hazard to the species, may involve a single and simple task - documenting the removal of the hazard. Monitoring of other efforts may involve more complicated and/or time-consuming efforts; for example, monitoring habitat restoration efforts may involve conducting vegetation and species surveys annually for several years.

The information collected through monitoring is very valuable to the Service, the States and other entities implementing agreements and plans, and to others concerned about the welfare of the species covered by the agreements and plans. Because the effectiveness of conservation efforts is determined through monitoring, monitoring is essential for improving future conservation efforts.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The Service does not require, but will accept, plans and reports electronically. We have not developed a form to be used for submission of plans or reports. In the past, we have made plans and annual reports from states available through the Internet, and plan to continue this practice.

4. Describe efforts to identify duplication.

Developing and submitting an agreement is necessary in order for the Service to determine if it meets the criteria included in the policy. Monitoring individual agreements and plans is necessary because they are species- and site-specific. As a matter of practice, the Service, as well as the developer of an agreement or plan, ensures that there is no duplication of effort within an individual monitoring plan.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Although conservation efforts that are capable of making the listing of a species as threatened or endangered unnecessary are usually developed by States or other units of government, small businesses or small entities may develop agreements or plans or may agree to implement certain conservation efforts identified in a State agreement or plan. However, the burden for developing a plan or monitoring conservation efforts will be the same for small entities since the purpose of each plan and monitoring is to conserve a species so that it does not require the protections of the Endangered Species Act. The requirements announced in the policy are the minimum criteria for all efforts.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If a plan is not developed and submitted, the Service may not be able to verify that actions are being taken that will contribute to making a listing unnecessary. If monitoring is not conducted, the Service may not be able to verify that the conservation efforts are being implemented, or are effective. The Service may then determine that, based on the best available information, listing the species is warranted.

The Service does not require more monitoring than necessary to accomplish the objective of the plan, which is to be effective. If this level of effort was reduced, the agreement or plan would provide less certainty that the efforts will be effective.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The Service generally asks States and other entities to submit monitoring reports annually, since most monitoring consists of measuring annual vegetation growth or species population growth. In addition, many agreements and plans are funded on an annual basis; monitoring annual progress in implementation is most appropriate. However, the Service may ask the State or other entity to report certain accomplishments or conditions before the scheduled submittal of an annual report, such as completion of construction of a habitat feature, the increase in severity of a threat, the detection of a new threat, and other factors that may have important consequences for the conservation of the species.

The Service does not require States or other entities to retain monitoring reports or data. However, States and other entities generally consider monitoring reports and data as important for planning future conservation actions. Also, State law, regulations, or practices may require State agencies to retain records for auditing purposes.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The Service has consulted with outside entities to obtain their views on information collection associated with this policy. As stated above, monitoring and reporting the progress and results of implementation of conservation efforts is considered an essential component of scientifically sound agreements and plans by conservation professionals and are currently routinely incorporated in agreements and plans. The Service included a criterion in this policy requiring agreements and plans to include monitoring and reporting provisions to ensure consistency with sound biological and conservation principles and for completeness.

The public was given an opportunity to comment on the information collection associated with this draft policy when it was published for public comment and review on June 12, 2000. We received two comments on our estimates of man-hours needed to complete an agreement and to conduct the monitoring. Both commenters indicated that we had underestimated the number of hours. In our final policy, we will address these comments and indicate that we have increased our estimates (our new estimates are provided below).

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

The Service does not provide payments or gifts to those submitting monitoring reports.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The Service has authority to protect confidential information to the extent provided under the Freedom of Information Act. However, all monitoring reports are available for public review. Sometimes a State may be concerned about releasing sensitive information such as species locations on private lands. However, if collecting and or reporting sensitive information is necessary for assessing the progress and results of implementation of the agreement or plan, and the State is unwilling or legally unable to collect and/or report this information, the Service may determine that the agreement or plan does not provide a high enough level of certainty that it will be implemented and effective and that, therefore, listing is warranted.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The information collection associated with the development of a plan and monitoring does not require answering any questions about a person's private life.

12. Provide an estimate in hours of the burden of the collection of information.

Since 1997, the Service has entered into three conservation agreements which at the time we determined contributed to removing the need to list the covered species as threatened or endangered. For purposes of this exercise, we will assume that at least one agreement will be developed annually with the intent of making listing unnecessary, and that at least every other one of these will be successful in making listing unnecessary, and in this case, the States or other entities who develop these agreements will carry through with their monitoring commitments in order to keep the covered species off the list. Therefore, we estimate that two successful agreements will be in place over the next three years.

The Service estimates the States and other entities will spend an average of 1,000 to 4,000 person-hours, with an average of 2,500 person hours, to complete each agreement or plan that has the intention of making listing unnecessary. This is a one-time burden for each agreement developed. Based on a rate of \$50 per hour, we estimate that the cost to a State or other entity to develop the agreement will average \$125,000. The burden to the estimated one entity that chooses to develop an agreement in a given year totals 2,500 hours. Therefore, the total cost of developing agreements to preclude listing under this policy is \$125,000.

We further estimate that for the agreements that the States or other entities develop that are successful in precluding listing, they will spend an average of 320 hours to conduct the monitoring and 80 hours to prepare a report. Based on a rate of \$50 per hour, we estimate the cost to a State or other entity to conduct the monitoring and to prepare a report to average \$20,000. The annual burden to 2 States or other entities to complete monitoring and reporting

totals 800 hours. The total cost of monitoring and reporting associated with this policy is, therefore, \$40,000.

Burden Estimates for Reporting Requirements for the Draft Policy for Evaluation of Conservation Efforts in Making Listing Decisions

Type of activity	Number	Average time required (hours)	Burden hours
Developing agreement with intent to preclude listing (one-time burden)	1	2,500	2,500
Monitoring (annual)	2	320	640
Report preparation (annual)	2	80	160
Total	5		3,300

The nature of the monitoring and reporting component of an agreement or plan will vary according to the species addressed, land ownership, specific conservation efforts, and other factors. Monitoring and reporting implementation of some efforts, such as the removal of a structural hazard to the species, may involve a single and simple task - documenting the removal of the hazard. Monitoring of an agreement or plan which relies primarily on protection or preservation of an area of habitat may involve a simple site inspection to verify that the habitat has not been vandalized or otherwise adversely modified. Monitoring of other conservation efforts may involve more complicated and/or time-consuming efforts; for example, monitoring habitat restoration efforts may involve conducting vegetation and species surveys annually for several years. In addition, some species are easy to survey while others are difficult.

States and other entities often have management responsibility for the species which become the subject of agreements or plans. States and other entities routinely conduct monitoring and reporting of these species and conservation efforts for these species as a part of on-going management. In these cases, monitoring and reporting for purposes of compliance with this policy is not an added burden for the State or other entity.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

We do not anticipate any costs to applicants beyond those described above except for copying and mailing plans and reports. We estimate that each plan will cost about \$50.00 for copying and mailing and each annual report will cost about \$50.00 for copying and mailing with a total annual cost of about \$150.00 (one plan and two reports).

14. Provide estimates of annualized cost to the Federal government.

The Service estimates it will take an average of 160 hours for the Service to review each agreement or plan. Therefore, the annual burden to the Service resulting from one entity submitting agreements or plans with the intention of precluding the need to list a species totals is also 160. The Service estimates it will take an average of 2 hours per report for the Service to review the monitoring information collected on the species. Therefore, the annual burden to the Service resulting from 2 entities reporting information totals 4 hours. The cost of this review is estimated at \$30.00 per hour, or a total of \$120.00.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This is a new clearance request, and therefore, a program change.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Depending on public interest, publication of plans and reports may be made available through the Federal Register or the Internet.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

There is no statistical sampling or other respondent selection involved in this process.

procedure will provide small businesses with a meaningful opportunity to compete in an open auction.

73. *Alter the Transfer Requirements for Certain Licenses:* The Commission proposes to modify the Commission's transfer requirements to correspond to the Commission's proposed changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, the Commission tentatively concludes that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, the Commission seeks comment on a proposal that will allow a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by the rules. The Commission also seeks comment on whether it should evaluate a licensee's compliance with construction requirements on a system-wide basis.

74. *Eliminate the License Cap:* The Commission proposes to remove § 24.710 from the Commission's rules which prohibits an auction applicant from winning more than 98 C and F block licenses. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the Commission's proposal to reconfigure the available 30 MHz C block licenses would create additional C block licenses, while the Commission's proposal to eliminate the eligibility restrictions would increase the chances of C and F block licenses being won by a variety of entities.

75. *Retain the Spectrum Cap:* The Commission tentatively concludes that it should not grant the petitions seeking waiver of, or forbearance from, the CMRS spectrum cap rules and, accordingly, it would apply the spectrum cap to licenses of PCS C and F block spectrum to be auctioned in Auction 35. The Commission's proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary.

76. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of

new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that the proposals, alternatives, and tentative conclusions described in this Notice promote these goals while maintaining the fair and efficient execution of the auctions program. The Commission, therefore, seeks comment on all issues, proposals, tentative conclusions, and alternatives described in the Notice, and the impact they may have on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

77. None.

List of Subjects in 47 CFR Part 24

Communications common carriers, Personal communications services, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00-14881 Filed 6-12-00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter IV

[Docket: 000214043-0043-01]

RIN 1018-AF55, 0648-AL91

Announcement of Draft Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of draft policy.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (Services), announce a draft policy for the evaluation of conservation efforts when making listing decisions under the Endangered Species Act of 1973, as amended (Act). While the Act requires us to consider all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts contribute to

making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.

DATES: Send your comments on the draft policy to us (see **ADDRESSES** section) by August 14, 2000.

ADDRESSES: Send your comments on the draft policy to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., (MS-420 ARLSQ), Washington, DC 20240, or to FW9 FWE_DTEFR@fws.gov. You may examine the comments we receive by appointment during normal business hours in Room 420, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service at the above address, telephone 703/358-2171 or facsimile 703/358-1735, or Wanda Cain, Chief, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, 13th Floor, Silver Spring, Maryland 20910, telephone 301/713-1401 or facsimile 301/713-0376.

SUPPLEMENTARY INFORMATION:

Draft Policy

Policy Purpose

We have proposed this policy in order to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. We have also proposed this policy to facilitate the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Policy Scope

This policy applies to our evaluation of all formalized conservation efforts when making listing decisions for species not listed, including findings on petitions to list species and decisions on whether to assign candidate status, to remove candidate status, to issue proposed listing rules, and to finalize or withdraw proposed listing rules. This policy applies to formal conservation efforts developed with or without a specific intent to influence a listing

decision and with or without the involvement of the Services. This policy identifies criteria we will use to evaluate the certainty of implementation and effectiveness of formalized conservation efforts that have not yet been implemented or have been recently implemented and have not yet demonstrated effectiveness at the time of a listing decision. The criteria will be used to determine whether a formalized conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered.

In many cases, conservation efforts affecting a particular species will have been implemented and will have shown results well before the time of a listing decision. In those cases, development of an agreement or plan, and an evaluation of its certainty of implementation and effectiveness, would not be necessary, because the results of the implemented conservation efforts will be considered when we make a listing decision.

The policy does not provide guidance for determining the level of conservation or the types of conservation efforts needed to make listing unnecessary. Also, the policy does not provide guidance for determining when parties should enter into agreements or when a conservation effort should be included in an agreement or plan. The policy provides guidance only for evaluating the certainty of implementation and effectiveness of formalized conservation efforts. Although the certainty of implementation and effectiveness of a conservation effort may be considered in determining the appropriateness of including the effort in an agreement or plan, no particular level of certainty must be provided in order to include the effort in an agreement or plan.

Definitions

“Adaptive management is the process of monitoring the results of implemented conservation efforts, then adjusting those efforts according to what was learned.

“Agreements and plans” include conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals.

“Candidate species,” as defined by regulations at 50 CFR 424.02(b), means any species being considered for listing as an endangered or a threatened species, but not yet the subject of a proposed rule. However, the FWS includes as candidate species those

species for which the FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The NMFS includes as candidate species those species for which it has information indicating that listing may be warranted but for which sufficient information to support actual proposed listing rules may be lacking. The term “candidate species” used in this policy refers to those species designated as candidates by either of the Services.

“Conservation efforts,” for the purpose of this policy, are specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions.

“Formalized conservation efforts” are conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document.

Authority

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(a)(1)), states that we must determine whether a species is threatened or endangered because of any of the following five factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; and
- (E) Other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to “tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.” Read together, sections 4(a)(1) and 4(b)(1)(A) and our regulations at 50 CFR section 424.11(f) require us to consider any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species’ status (*i.e.*, efforts that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the

section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—“the inadequacy of existing regulatory mechanisms”—indicates that we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

In addition, we construe the analysis required under section 4(a)(1), in conjunction with the directive in section 4(b)(1)(A), to authorize and require us to consider whether the actions of any other entity, in addition to actions of State governments, create, exacerbate, reduce, or remove threats to the species. Factor (E) in particular—any “manmade factors affecting [the species’] continued existence”—requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 requires us to consider any conservation efforts by State or local governments, Tribal governments, Federal agencies, businesses, organizations, or individuals that positively affect the species’ status.

Conservation efforts are often informal, such as when a property owner implements conservation measures for a species simply because of concern for the species or interest in protecting its habitat, and without any specific intent to affect a listing decision. Conservation efforts are also often formalized in conservation agreements, conservation plans, management plans, or similar documents. The development and implementation of such agreements and plans have been an effective mechanism for conserving declining species and have, in some instances, made listing unnecessary. These efforts are consistent with the Act’s finding that “encouraging the States and other interested parties * * * to develop and maintain conservation programs. * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation’s heritage in fish, wildlife, and plants” (16 U.S.C. 1531 (a)(5)).

In some situations, the listing process may be under way, and formalized conservation efforts have yet to be implemented. We may determine that a formalized conservation effort that has not yet been implemented reduces or removes a threat to a species when we have sufficient certainty that it will be implemented and effective.

Deciding or determining whether a species meets the definition of threatened or endangered requires us to make a prediction about the future persistence of a species. Central to this concept is a prediction of future

conditions, including consideration of future negative effects of anticipated human actions. We cannot protect species without taking into account future threats that have a high likelihood of affecting a species. The Act does not require that, and species conservation would be compromised if, we wait until a threat is actually harming individuals before we list the species as threatened or endangered. Similarly, the magnitude and/or severity of a threat may be reduced as a result of future positive human actions. Common to the consideration of both the effects of future negative human actions and the effects of future positive human actions is a determination of the certainty that the actions will occur and that their effects on the species will be realized. We therefore consider both future negative and future positive human impacts when assessing the status of the species.

For example, if a State recently instituted a program to eliminate collection of a reptile being considered for listing, we must assess the predicted consequences of this program on the status of the species. For those parts of the program recently instituted, a record to determine the effect on the species may not yet exist. Therefore, we must base an assessment of the adequacy of the program on predicted compliance and effects. Such an assessment would reasonably include an evaluation of the State's ability to enforce new regulations, educate the public, monitor compliance, and monitor the effects of the program on the species. We would determine that the program reduces the threat of overutilization of the species through collecting if we found sufficient certainty that the program would be implemented and effective.

The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future status, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. In addition, the first factor in section 4(a)(1)—the present or threatened destruction, modification, or curtailment of [the species'] habitat or range—explicitly requires us to analyze both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range. However, future actions by Federal agencies, States, Tribes, and private entities that create, exacerbate, reduce, or remove threats are not limited to

actions affecting a species' habitat or range. Congress did not intend for us to consider current and future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected by the language of the Act, to require us to consider both current actions that are affecting a species' status and sufficiently certain future actions—either positive or negative—that will affect habitat, range, overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors.

The consideration of both positive and negative effects of human actions in making a prediction about the future persistence of a species also requires consideration of voluntary human actions. The threats to species that lead to listing as threatened or endangered are often the result of voluntary human actions. For example, decisions to develop property, harvest timber, or otherwise use or manage land or other natural resources in ways that pose a threat to a species are typically voluntary, as opposed to mandatory, actions. We must factor the effects of these voluntary detrimental actions into our assessment. Similarly, decisions to forego development or other changes in land use or management that would pose a threat to a species, as well as decisions to initiate conservation efforts that will have a positive effect on the species, are often voluntary, as opposed to mandatory, actions. Voluntary beneficial actions, whether initiated independently or through participation in a formalized conservation effort, must also be factored into our assessment.

For example, a State could have a voluntary incentive program for protection and restoration of riparian habitat that includes providing technical and financial assistance for fencing to exclude livestock. To assess the effectiveness of this voluntary program, we would evaluate the level of participation (*e.g.*, number of participating landowners or number of stream-miles fenced), the length of the commitment by landowners, and effects of the program on the species. We would determine that the program reduces the threat of habitat loss and degradation if we find sufficient certainty that the program is effective.

Evaluation Criteria

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts

(*i.e.*, actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to making listing a species as threatened or endangered unnecessary or contributes to forming a basis for listing as threatened rather than endangered, we must evaluate whether the conservation effort affects the status of the species. Two factors are key in that evaluation: (1) For those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) the certainty that the conservation effort will be effective. Because the certainty of implementation and effectiveness of formalized conservation efforts may vary, we will evaluate each effort individually. In order for us to determine that a formalized conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered, the conservation effort must meet the following criteria.

A. The certainty that the conservation effort will be implemented:

1. The conservation effort; the party(ies) to the agreement or plan that will implement the effort; and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.

2. The authority of the party(ies) to the agreement or plan to implement the conservation effort and the legal procedural requirements necessary to implement the effort are described.

3. Authorizations (*e.g.*, permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations is provided.

4. The level of voluntary participation (*e.g.*, by private landowners) necessary to implement the conservation effort is identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation is provided (*e.g.*, an explanation of why incentives to be provided are expected to result in the necessary level of voluntary participation).

5. All regulatory mechanisms (*e.g.*, laws, regulations, ordinances) necessary to implement the conservation effort are in place.

6. A high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding is provided.

7. An implementation schedule (including completion dates) for the conservation effort is provided.

8. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

1. The nature and extent of threats being addressed by the conservation effort are described.

2. Explicit objectives for the conservation effort and dates for achieving them are stated.

3. The steps necessary to implement the conservation effort are identified.

4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified.

5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided.

6. Principles of adaptive management are incorporated.

These criteria should not be considered comprehensive evaluation criteria. The certainty of implementation and effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and action-specific factors. We will consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

In addition, we will consider the estimated length of time that it will take for a formalized conservation effort to remove or reduce threats to the species. In some cases, the nature, severity, and/or imminence of threats to a species may be such that a conservation effort cannot be expected to remove or reduce threats quickly enough to make listing unnecessary.

An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered. To determine that a formalized conservation effort contributes to making listing a species as threatened or endangered unnecessary, or contributes

to forming a basis for listing as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered.

Additional Considerations

Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals contemplating development of an agreement or plan should be aware that, because the Act mandates specific timeframes for making listing decisions, we cannot delay the listing process to allow additional time to complete the development of an agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing decision. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act, which would establish only those prohibitions necessary for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery and delisting.

In addition, we encourage the development of agreements or plans even if they do not meet the criteria listed in this policy. We hope that efforts contained in such plans would be implemented by the time we must make a listing decision. If efforts have been, or will be, implemented by the time we must make a listing decision, there is no need to provide certainty of implementation. However, prior to making a listing decision, we would evaluate the certainty of effectiveness of any newly implemented efforts.

If we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of a formalized conservation effort, we will monitor the status of the species and the progress in implementation of the conservation effort. If there is (1) A failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; or (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat, we will reevaluate the status of the species and consider whether initiating the listing process is

necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule.

Public Comments Solicited

We request comments on four aspects of this notice: (1) The content of the draft policy; (2) other related issues; (3) the clarity of this notice; and (4) the collection of information from the public expected to be associated with preparation and submission of conservation agreements and plans and with monitoring and reporting the implementation progress and effectiveness of conservation efforts, which requires Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

Comments on the Content of the Draft Policy

We solicit your comments on the content of this draft policy. We are especially interested in your comments on the criteria that we will use to evaluate the certainty that a formalized conservation effort will be implemented. For example, must all regulatory mechanisms (e.g., laws, regulations, ordinances) necessary to implement a conservation effort actually be in place in order for us to determine that the effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered? Or is it sufficient that the conservation effort include a high level of certainty that the regulatory mechanisms will be adopted by a specified date? Similarly, should funding, authorizations, and voluntary participation be in place at the time a conservation effort is evaluated, or is it sufficient that the conservation effort include a high level of certainty that they be in place by a specified date? In addition, how might an entity demonstrate a high level of certainty of implementation of a conservation effort? In determining a final action on this draft policy, we will take into consideration all comments we receive during the comment period.

Comments on Other Related Issues

Also, we are interested in your comments on the timing of the development of conservation agreements or plans. We encourage early development of conservation agreements or plans, prior to the need to propose a species for listing, such as at or before the time a species is placed

on the candidate list. However, agreements or plans often have been initiated or accelerated when one of the Services has proposed to list a species. Listing proposals generally provide a 60-day comment period. At the latest, we should receive conservation agreements or plans before the end of the comment period in order to be considered in a final listing decision. Beginning development of a conservation agreement or plan after the species is proposed for listing generally does not allow much time for implementation of any new conservation efforts identified as necessary in an agreement or plan. In that case, we must rely on our analysis of the certainty of implementation and effectiveness of those proposed efforts when making a listing decision. We hope that, by identifying specific criteria for evaluation of conservation efforts, this policy will encourage earlier development of conservation efforts such that many of the identified conservation efforts will be implemented by the time a final listing decision is made. Are there other ways to encourage earlier development of conservation efforts?

Clarity of the Policy

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this policy easier to understand, including answers to the following questions: (1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the policy? (2) Does the policy contain technical language or jargon that interferes with its clarity? (3) Does the format of the policy (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) What else could we do to make the policy easier to understand?

Send your comments concerning the content or clarity of this draft policy to the FWS (see **ADDRESSES** section).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3501 *et seq.*) requires Federal agencies to obtain OMB approval for certain collections of information from the public. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Simultaneous to publication of this notice, we are requesting OMB approval for information collection associated with this draft policy. The OMB regulations implementing provisions of

the Paperwork Reduction Act require agencies to provide interested members of the public and other affected agencies an opportunity to comment on agency information collection and recordkeeping activities (see 5 CFR 1320.11). Our request for approval from OMB for a collection of information from the public must include an estimate of the information collection and recordkeeping burden that would result from our draft policy if made final.

The development of a conservation agreement, conservation plan, management plan, or similar document by a State or other entity is completely voluntary. While this policy applies to formal conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services, only those agreements or plans developed to influence a listing decision, with the involvement of the Service, constitute a new information collection requiring OMB approval under the Paperwork Reduction Act. In addition, when a State or other entity develops such an agreement or plan with the specific intent of making listing of a species unnecessary, the criteria identified in our draft policy can be construed as requirements placed on the development of the agreement or plan. In other words, a State or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

In addition, one of the criteria identified in our draft policy is that a provision must be included that provides for monitoring and reporting the progress and results of implementation of a conservation effort. Conservation professionals have long considered monitoring and reporting to be an essential component of scientifically sound agreements and plans and routinely incorporate monitoring and reporting into these agreements and plans. We included a monitoring and reporting criterion in this policy to ensure consistency with sound biological and conservation principles and for completeness. Although monitoring and reporting provisions are already generally included in agreements and plans, this criterion also constitutes a new information collection requiring OMB approval under the Paperwork Reduction Act.

Estimating the amount of work associated with developing a conservation agreement or plan with the intent of making listing unnecessary and

with monitoring and reporting the progress and results of implementation of conservation efforts is difficult because: (1) The development (and associated monitoring) of conservation efforts is completely voluntary, and we cannot predict who will decide to develop these efforts; (2) we cannot predict which species will become the subjects of conservation efforts and, therefore, cannot predict the nature and extent of conservation efforts and monitoring included in agreements and plans; and (3) many plans, such as agency land management plans, are developed to satisfy requirements of other laws or for other purposes, and we cannot predict whether, or the extent to which, some of these plans may be expanded to attempt to make listing unnecessary. For these reasons, we must base our estimate of the amount of work associated with developing conservation agreements or plans and monitoring and reporting of conservation efforts on information from conservation agreements developed in the past.

A. Fish and Wildlife Service

Since 1994, the FWS has entered into approximately 60 conservation agreements. About 14 of these agreements contributed to making listing the covered species as threatened or endangered unnecessary. Based on this information, we have entered into an average of about 15 agreements per year, 3 or 4 of which have made listing unnecessary. We expect that these averages will remain stable or increase. We will estimate that annually six agreements will be developed with the intent of making listing unnecessary, that four of these will be successful in making listing unnecessary, and, therefore, in four cases, the States or other entities who develop these agreements will carry through with their monitoring commitments in order to keep the covered species from being listed.

We estimate that each agreement developed with the intent of making listing unnecessary will require an average of 320 person-hours to complete. This estimate is a one-time burden for each plan developed. The burden to six States or other entities who choose to develop an agreement in a given year totals approximately 1,920 hours.

We estimate that, for each conservation effort, the State or other entity will spend annually an average of 160 person-hours to conduct the monitoring and 40 person-hours to prepare a report. Therefore, the annual burden to four States or other entities to

complete monitoring and reporting totals approximately 800 hours.

B. National Marine Fisheries Service

Since 1997, NMFS has entered into three conservation agreements, all of which we determined at the time contributed to making it unnecessary to list the covered species as threatened or endangered. We are assuming that at least one agreement will be developed annually with the intent of making listing unnecessary, and that about half of these will be successful in making listing unnecessary. We estimate that each agreement developed with the intent of making listing unnecessary will require an average of 320 person-hours to complete. This is a one-time burden for each plan developed. Therefore, the burden to one State or another entity that chooses to develop an agreement in a given year totals about 320 hours.

For each conservation effort, the State or other entity will spend an average of 160 hours to conduct the monitoring and 40 hours to prepare a report. Therefore, the annual burden to a State or another entity to complete monitoring and reporting totals about 200 hours. Over the next 3 to 5 years, we anticipate that two States or entities will have agreements in place that will require monitoring and reporting. Therefore, the monitoring and reporting requirement will total about 400 hours each year.

The Services will submit a request to OMB for approval of this collection of information concurrent with the proposed rulemaking action. We are also soliciting comments on this information collection approval request. We invite comments on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the information collection burden; (3) ways to enhance the quality, utility, and clarity of the information we would collect; and (4) ways to minimize the burden of the information collection on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send your comments on specific information collection requirements to the Desk Officer for the Interior Department and Commerce Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB has up to 60 days to approve or disapprove information collection but

may respond after 30 days. Therefore, to ensure consideration, you should submit your comments concerning information collection to OMB at the above address by July 13, 2000.

Economic Analysis

This draft policy will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This draft policy will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This draft policy will not raise novel legal or policy issues.

The Departments of the Interior and Commerce certify that this draft policy will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Services expect that this draft policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

This policy identifies criteria that a conservation effort must satisfy to ensure certainty of implementation and effectiveness and for the Services to determine that the conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. The Services developed this draft policy to ensure consistent and adequate evaluation of agreements and plans when making listing decisions and to help States and other entities develop agreements and plans that will be adequate to make listing species unnecessary.

The criteria in this policy primarily describe elements that are already included in conservation efforts and that constitute sound conservation planning. For example, the criteria requiring identification of responsible parties, obtaining required authorizations, establishment of objectives, and inclusion of an implementation schedule and monitoring provisions are essential for directing the implementation and affirming the effectiveness of conservation efforts. These kinds of "planning" requirements are generally already included in conservation efforts and do not establish any new implementation burdens. Rather, these requirements will help to ensure that conservation efforts are well planned and, therefore, increase the likelihood that conservation efforts will ultimately be successful in making listing species unnecessary.

The development of an agreement or plan by a State or other entity is

completely voluntary. However, when a State or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing a species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans; the State or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

Other criteria require demonstrating certainty of implementation and effectiveness of conservation efforts. We have always considered the certainty of implementation and effectiveness of conservation efforts when making listing decisions. Although we have not had explicit evaluation criteria in the past, we believe the criteria in this policy are consistent with the requirements of the Endangered Species Act. Therefore, we believe that no economic effects on States and other entities will result from compliance with the criteria in this policy.

Furthermore, publication of this policy will have positive effects by informing States and other entities of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby helping States and other entities develop voluntary formalized conservation efforts that will be successful in making listing unnecessary. Therefore, we believe that informational benefits will result from issuing this policy. We believe these benefits, although important, will be insignificant economically.

Required Determinations

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The Services certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The Services expect that this draft policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts (see Discussion above).

b. This draft policy will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, this draft policy does not have significant takings implications. While State or local

governments may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as a result of this policy. This policy has no provision that would take private property rights.

Federalism. In accordance with Executive Order 13132, this draft policy does not have significant Federalism effects.

Civil Justice Reform. In accordance with Executive Order 12988, this draft policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the draft policy, requirements under section 4 of the Endangered Species Act will be clarified to entities that voluntarily develop formalized conservation efforts.

National Environmental Policy Act. We have analyzed this draft policy in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This draft policy does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the draft policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The National Oceanic and Atmospheric Administration (NOAA) has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216-6 Administrative Order, Environmental Review Procedure.

Section 7 Consultation. The Service has determined that issuance of this draft policy will not affect species listed as threatened or endangered under the Endangered Species Act, and, therefore, a section 7 consultation on this draft policy is not required.

Government-to-Government Relationship With Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, this draft policy does not directly affect Tribal resources. The effect of this draft policy on Native American Tribes would be determined on a case-by-case basis with individual evaluations of formalized conservation efforts. Under Secretarial Order 3206, the Service will, at a minimum, share with the entity that developed the formalized conservation effort any information provided by the Tribes, through the public comment period or formal submissions, and advocate the

incorporation of conservation efforts that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the formalized conservation effort and after careful consideration of the Tribe's concerns, the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Service's trust responsibility. Accordingly:

a. We have not yet consulted with the affected Tribe(s). This requirement will be addressed with individual evaluations of formalized conservation efforts.

b. We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed with individual evaluations of formalized conservation efforts.

c. We will consider Tribal views in individual evaluations of formalized conservation efforts.

d. We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this draft policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.

Dated: April 9, 2000.

Jamie Rappaport Clark,
Director, Fish and Wildlife Service.

Dated: May 19, 2000.

Penelope D. Dalton,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 00-14731 Filed 6-12-00; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for Petitions To List *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as Threatened or Endangered and Commencement of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding on two petitions to list *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as endangered or threatened species throughout their ranges under the Endangered Species

Act of 1973, as amended (Act). We find that the petitions presented substantial information indicating that listing of both species may be warranted. We are initiating a status review to determine if listing of either or both species is warranted.

DATES: The finding announced in this document was made May 31, 2000. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by September 11, 2000.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the State Supervisor, Oregon State Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr. (see **ADDRESSES** section) (telephone 503/231-6179).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and we are to publish the finding promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the involved species and to disclose its findings within 12 months (12-month finding).

We received two separate formal petitions from the Rogue Group Sierra Club of Ashland, Oregon, both dated September 9, 1999, to list *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as endangered or threatened throughout their ranges, and to designate critical habitat. Accompanying the petitions was supporting information relating to taxonomy, ecology, threats, and past and present distribution of *H. hendersonii* and *L. aridus* ssp. *ashlandensis*.

The processing of the petitions conforms with our Listing Priority Guidance published in the **Federal**

Sec. 1533. Determination of endangered species and threatened species

- (a) Generally
 - (1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:
 - (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
 - (B) overutilization for commercial, recreational, scientific, or educational purposes;
 - (C) disease or predation;
 - (D) the inadequacy of existing regulatory mechanisms; or
 - (E) other natural or manmade factors affecting its continued existence.
 - (2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970 -
 - (A) in any case in which the Secretary of Commerce determines that such species should -
 - (i) be listed as an endangered species or a threatened species, or
 - (ii) be changed in status from a threatened species to an endangered species,
he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;
 - (B) in any case in which the Secretary of Commerce determines that such species should -
 - (i) be removed from any list published pursuant to subsection (c) of this section, or
 - (ii) be changed in status from an endangered species to a threatened species,
he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and
 - (C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.
 - (3) The Secretary, by regulation promulgated in accordance with subsection (b) of this section and to the maximum extent prudent and determinable -
 - (A) shall, concurrently with making a determination under

paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and
 (B) may, from time-to-time thereafter as appropriate, revise such designation.

- (b) Basis for determinations

- (1)

- (A) The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas.
- (B) In carrying out this section, the Secretary shall give consideration to species which have been -
 - (i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or
 - (ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

- (2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

- (3)

- (A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section [553](#)(e) of title 5, to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the

status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

- (B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:
 - (i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.
 - (ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).
 - (iii) The petitioned action is warranted, but that -
- (I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and
- (II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this chapter are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.
- (C)
 - (i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.
 - (ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.
 - (iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 [11](#) to prevent a significant risk to the well being of any such species.
- (D)
 - (i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section [553](#)(e) of title 5, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.
 - (ii) Within 12 months after receiving a petition that is found under clause (i) to

present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

- (4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section [553](#) of title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.
- (5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall -
 - (A) not less than 90 days before the effective date of the regulation -
 - (i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and
 - (ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county, or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;
 - (B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;
 - (C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;
 - (D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and
 - (E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.
- (6)
 - (A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register -
 - (i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either -
 - (I) a final regulation to implement such determination,

- (II) a final regulation to implement such revision or a finding that such revision should not be made,
- (III) notice that such one-year period is being extended under subparagraph (B)(i), or
- (IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or
 - (ii) subject to subparagraph (C), if a designation of critical habitat is involved, either -
- (I) a final regulation to implement such designation, or
- (II) notice that such one-year period is being extended under such subparagraph.
- (B)
 - (i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.
 - (ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.
 - (iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.
- (C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that -
 - (i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or
 - (ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one

additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

- (7) Neither paragraph (4), (5), or (6) of this subsection nor section [553](#) of title 5 shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if -
 - (A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and
 - (B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur. Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.
- (8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.
- (c) Lists
 - (1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b) of this section.
 - (2) The Secretary shall -

- (A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and
- (B) determine on the basis of such review whether any such species should -
 - (i) be removed from such list;
 - (ii) be changed in status from an endangered species to a threatened species; or
 - (iii) be changed in status from a threatened species to an endangered species. Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.

- (d) Protective regulations

Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section [1538\(a\)\(1\)](#) of this title, in the case of fish or wildlife, or section [1538\(a\)\(2\)](#) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section [1535\(c\)](#) of this title only to the extent that such regulations have also been adopted by such State.

- (e) Similarity of appearance cases

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that -

- (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;
- (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and
- (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

- (f) Recovery plans

- (1) The Secretary shall develop and implement plans (hereinafter in this subsection

referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable -

- (A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;
- (B) incorporate in each plan -
 - (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;
 - (ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and
 - (iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

- (2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.
- (3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.
- (4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.
- (5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

- (g) Monitoring

- (1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this chapter are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c) of this section.
- (2) The Secretary shall make prompt use of the authority under paragraph 7 [\[2\]](#) of subsection (b) of this section to prevent a significant risk to the well being of any such

recovered species.

- (h) Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments

The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to -

- (1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;
- (2) criteria for making the findings required under such subsection with respect to petitions;
- (3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and
- (4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

- (i) Submission to State agency of justification for regulations inconsistent with State agency's comments or petition

If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

Footnotes

[\[1\]](#) So in original. Probably should be paragraph "(7)".

[\[2\]](#) So in original. Probably should be paragraph "(7)".